

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF CITY OF MADISON, WISCONSIN

These Comments are filed by the City of Madison, Wisconsin in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Madison believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Madison, similar to many other communities, has a cable ordinance (Madison General Ordinances 36A) which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents are collectively referred to as the "franchise" below.

Cable Franchising in Our Community

Community Information

Madison, Wisconsin is a City with a population of 210,000. Our franchised cable provider is Charter Communications. Our community has negotiated cable franchises since 1965.

Our Current Franchise

Our current franchise began on May 20, 1997 and expires on May 20, 2012. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Franchise Fee Payments

Our 1997 franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. The cable operator is able to recover these costs by including the franchise fee as a line-item "pass-through" on subscribers' monthly bills.

PEG Access Requirements

Based on our 1996 Community Needs Assessment as well as input from stakeholders, citizens and elected officials during our franchise renewal process, the City of Madison deemed it important to continue to require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system:

- One channel devoted to public access;
- Two channels devoted to educational access; and
- One channel devoted to government access.

Madison's 1997 franchise requires that our PEG channels be supported in the following ways by the cable operator:

A one-time capital grant of \$300,000 which was divided between the public access channel and the government access channel, and

A monthly "pass-through" set at 55 cents per subscriber per month with a 2% annual inflator, which is also divided between the public access channel and the government access channel.

This agreement struck a reasonable balance between meeting community needs while also allowing cost-recovery for the cable operator. The cable operator promotes the inclusion of this local programming on its system as a competitive advantage over satellite dish systems, and has never reported the loss of a single subscriber due to the small monthly PEG Access "pass-through".

Madison's 1997 franchise further requires that the cable operator

"...shall enter into good faith negotiations with another System to interconnect its Cable Television System solely for the purpose of showing PEG access channels. All terms and conditions will be set forth by Grantee and include cost of providing PEG access channels, equal sharing of all associated costs of PEG services and facilities, technical and economic feasibility, and actual costs of the physical interconnection."

Emergency Alert Requirements

This 1997 franchise continues the following requirements regarding emergency alerts:

"As required by federal law, Grantee shall incorporate into its System the capacity for an emergency override alert whereby a designee of the City, in times of crisis, may introduce an audio message on appropriate System channels. Grantee shall provide, in a convenient location, all equipment necessary for use of the emergency alert system." These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Customer Service Standards Requirements

Our franchise contains the following customer service obligations. By specifying and enforcing these standards, the City is legally able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

"The Grantee's customer service standards regarding operation of its System shall comply at a minimum with the FCC Customer Service Standards, Title 47, Code of Federal Regulations Section 76.309, as may be amended from time to time. In addition, the Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, to the extent feasible, shall be preceded by reasonable notice and shall occur during periods of minimum use of the System."

By working with local staff at the cable operator's local office, we are also able to resolve disputes and problems subscribers bring to our attention. The number of complaints brought to the City's attention and therefore resolved by our intervention has averaged around 175 per year. This data

will be invaluable in evaluating the cable operator's performance in the area of customer service during our 2012 renewal process.

Current Buildout Requirements and Minimum Density Test

The 1997 franchise contains the following build schedule for the cable operator:

"The energized trunk Lines, as rebuilt to meet the requirements herein and in the Ordinance, must be extended substantially throughout all portions of the City and the Persons along the route of the energized Line shall have individual activated Drops as desired. Within twelve (12) months, Grantee shall extend service to any area within or contiguous to the initial Service Area which exceeds a density of forty (40) dwelling units per cable mile, at the same rates and charges as those provided to the Subscribers in the initial Service Area." Although it does go on to state that "...the above-stated requirements may be waived by City..."

Further:

"The Grantee shall at its expense extend its System so as to provide Service to all residents of:

- (1) Newly annexed areas of the City not then served by the System with a density of forty (40) residential dwellings per cable mile or greater, or;
- (2) Any resident dwelling within the City limits and within one hundred fifty (150) feet of existing System, or;
- (3) Any other housing areas with a density of forty (40) dwelling units per cable mile or greater."

Further, the franchise contains a savings clause which (also reasonably) allowed the unsubsidized Cable Operator to recoup some of the cost of an unusual line extension while balancing the needs of all citizens of our community to be able to receive cable service if they so desire:

- "(1) In any area of City which contains residential dwellings which do not meet the minimum requirements of Section 2.A. above, Grantee shall extend Service on a cost-sharing basis if a Subscriber(s) in the affected area agree(s) to prepay Grantee's construction costs, which shall be based on Grantee's reasonable estimate of the cost to extend Service to the affected area.

- (2) In the portions of any housing area where service drops exceed one hundred fifty (150) feet, the resident shall be charged an additional amount for the installation equal to the incremental increase of the cost of time and materials for everything beyond one hundred fifty (150) feet.”

It is important to keep in mind that the buildout requirements cited above were written into a franchise for a system which had been franchised in Madison since 1965 and had basically achieved complete buildout within the City by 1975; therefore, the above requirements largely were intended to deal with new developments and annexations. The City would not at this time necessarily commit to such a strict buildout schedule for new entrants into the market, but would insist on universal service within a reasonable (and economically feasible for the new entrant) time frame. For example, the franchise negotiated in 1995 with Cyberstar (see below) gave them four years to build out coverage of the entire City of Madison.

Upgrade Requirements

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

“Grantee shall provide a System delivering a minimum of 54 programmed video channels.”

This system was upgraded and rebuilt in 1996, and currently delivers over 75 programmed channels on the expanded basic tier, over 30 channels on its digital tier, and provides pay-per-view and on-demand services. The upgraded system is also capable of providing cable modem service and telephone service to all Madison residents who can receive cable video services. Madison residents are able to take advantage of the state of the art of current technologies without the inequity of “cherry-picking”, or red-lining based upon geographic or socio-economic considerations.

Level Playing Field Provisions

Because the City of Madison believes that comparable providers of comparable multi-channel video services should be treated similarly in order to maintain truly level playing fields which foster fair competition, our franchise contains a "level playing field" provision which states the following:

“The City has determined that this Franchise, taken as a whole, offers no more or less favorable terms than those required of existing similarly situated Grantee(s) in City.”

Further:

“In the event the City enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other Person or entity other than the Grantee to enter into the City's Public Ways for the purpose of constructing or operating a System or providing Service to any part of the Service Area, the material provisions thereof shall be competitively neutral and non-discriminatory, in accordance with applicable law, and shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.”

Bonding and Insurance Requirements

Because the existing cable system is installed in public rights-of-way, which the City of Madison both owns outright and is responsible for (in both a maintenance and a liability sense), our franchise contains the following insurance and bonding requirements:

“At the time of acceptance of the Franchise by Grantee, Grantee shall deliver to City an irrevocable and unconditional Letter of Credit or other security fund (hereinafter "Letter of Credit") acceptable to City, in form and substance acceptable to the City Attorney, from or in a National or State bank approved by City, in the amount of Five Thousand (\$5,000) Dollars.

The Letter of Credit shall provide that funds will be paid to City, upon written demand of City, and in an amount solely determined by City in payment for penalties charged pursuant to this Franchise, for any monies owed by the Grantee pursuant to its obligations under the Ordinance or this Franchise, or for any damage incurred as a result of any acts or omissions by Grantee pursuant thereto.”

Public Rights-Of-Way Permits Required

Any user of the public rights-of-way – whether a permanent occupant such as a utility company or a temporary occupant such as a street festival – must obtain prior permission for their particular use of such rights-of-way. Therefore, while the cable franchise grants the cable operator the right to access to the public rights-of-way and compatible easements for the purpose

of providing cable television service, it is also important that, apart from the franchise, the cable provider is required to obtain a permit from the City of Madison Engineering Office as well before it may actually begin construction in the public rights-of-way:

“Permits 36A.05: With respect to the provision of Service pursuant to this Franchise, Grantee shall comply with the Permit requirements of Chapter 10 in lieu of the Permit requirements of Chapter 36A, Section 36A.05. Specifically, Grantee shall not be required to pay Permit Fees required in Section 36A.05(2) with respect to the provision of Service.”

Enforcement

Because any agreement without consequences for violation of its terms is an agreement that is not truly enforceable, our franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

“Subject to Police Powers. Subject to state and federal law, Grantee expressly acknowledges and agrees, by acceptance of this Franchise, that its rights under the Franchise are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety, health and welfare of the public. The Grantee agrees to comply with all such applicable general laws and ordinances enacted by the City pursuant to such police power. The City, by the granting of this Franchise, does not render or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the City under the Constitution and Statutes of the State of Wisconsin to regulate the use of the Streets and Public Ways; and Grantee, by its acceptance of this Franchise, acknowledges and agrees that all lawful powers and rights, whether regulatory or otherwise, as are or may be from time to time vested in or reserved to the City, shall be in full force and effect and Grantee shall be subject to the exercise thereof by the City at any time, provided, however, that nothing contained in this section shall preclude Grantee from seeking enforcement of its rights granted pursuant to this Franchise.”

The Franchising Process

Under well-defined federal, state, and local laws, our cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms were carefully negotiated by the two parties over the course of approximately

eighteen months. The length of these negotiations would have been cut at least in half were it not for (then-incumbent) TCI's erroneous assertion that their 1996 system rebuild guaranteed them an automatic fifteen-year renewal of their franchise. Once this issue was settled in the City of Madison's favor, the negotiations proceeded expeditiously.

Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – obviously, to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties. In this respect, Madison is no different than our fellow LFA's (Local Franchising Authorities) around the country.

Because many unpredictable technological changes as well as changes in federal or state law are likely to occur over the course of a 15 year franchise, our current 1997 franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

“In the event any valid and preemptive law, rule or regulation of any governing authority or agency having jurisdiction contravenes the provisions of this Franchise subsequent to its adoption; then the provisions of this Franchise shall be superseded only to limited the extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation.”

Competitive Cable Systems

Hoping for fair competition and greater consumer choice, the City of Madison granted a competitive franchise to Cyberstar, a cable overbuilder, in 1995. Regretfully, however, Cyberstar is not providing service in our community today. The history of this overbuilder is not unique to Madison alone. Cyberstar initially intended to only provide service to residence facilities on the extensive University of Wisconsin-Madison campus. Once the company was informed that, because their infrastructure would utilize City of Madison rights-of-way between campus facilities, they would have to enter into a Citywide franchise, the City and Cyberstar entered into negotiations in April 1995. These negotiations were rapidly concluded and a franchise approved by the Madison Common Council in July 1995. However, Cyberstar returned their franchise to the City in February 1996, citing changes in technology (particularly wireless systems) and an uncertain

competitive climate given the passage of the 1996 Telecommunications Act. It is ironic that a federal law designed to foster competition did, in fact, change the regulatory climate so dramatically that a certified and franchised overbuilder pulled out of providing service to the citizens of Madison.

The City of Madison has recently been approached to get permits to construct in Madison's public rights-of-way by AT&T/SBC. They have made it clear that the purpose of this construction is to provide multi-channel video service. By all available descriptions of their product, it appears to the City of Madison to be no different than "cable service" as described in federal law. Negotiations between the two entities has not yet begun; however, the City is ready to expedite approval of a franchise comparable to the existing franchise. The City of Madison has a negotiating team composed of individuals from the Mayor's Office, the City Attorney's Office, and the Office of the Cable Television Coordinator, and, having notified AT&T/SBC of same, awaits their response.

Non-Exclusivity

The City of Madison has not denied any provider the opportunity to serve in our community, and our franchise in fact states that:

"This Franchise is non-exclusive. The City reserves the right to grant additional Franchises to any Person at any time."

Conclusions

The past and current experience of Madison's Common Council, Mayor's Office, past and present cable operators, PEG Access facilities, subscribers, public schools, and other stakeholders, leads the City of Madison to firmly assert that the local cable franchising process functions well in Madison, Wisconsin. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account. This has been the City's policy and practice since the granting of the original cable franchise to Complete Channel Television in 1965; the purchase of the existing Madison system by TCI in 1984; the renewal of TCI's franchise in 1997; and the transfer of this franchise to Charter in 2000.

Our local cable franchising process ensures that:

-Any type of local multi-channel video operator will be allowed timely access to Madison's local rights-of-way in a fair and evenhanded manner; that

-Other users of the rights of way are not unduly inconvenienced; and that

-Local commercial uses of the local public rights-of-way, including maintenance and upgrade of private facilities located in public property, are undertaken in a manner which is in accordance with local requirements.

Local cable franchising also ensures that our local community's specific needs are met in a manner which responds directly and narrowly to those local needs, and, most importantly, that local customers – who are our citizens and constituents – have their needs met, problems resolved, and rights protected to the full extent that the City of Madison is empowered to do so.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. The City of Madison strongly believes – and has provided factual evidence to support our belief – that the local contractual relationship between the City and the incumbent cable operator Charter works well and that there is no need to create a new Federal bureaucracy in Washington to attempt to deal with matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in what kind of wire-line based features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to best meet local Madison needs. These factors, needs and considerations are equally applicable to any potential new entrants as they are to existing providers.

Let us be clear: The City of Madison recognizes that competition and choice in multi-channel video providers is in the best interests of all Madison residents. The City is therefore very willing to work on an expedited basis to arrange local franchise agreements with any qualified applicants, as long as a “level playing field” between all such providers is maintained and all the local benefits and protections to our citizens which are provided by local franchising are preserved.

The City of Madison, Wisconsin therefore respectfully suggests that the Commission need do nothing, and requests that the Commission in fact do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing and well-established Federal (and judicial) law with regard to either existing multi-channel video providers or new entrants. Madison, like other Commenters, embraces the concept that a certain amount of stability in

the regulatory climate surrounding this industry is in the best interests of the greatest number of stakeholders (as was clearly demonstrated by the many time-consuming and expensive judicial proceedings which followed the 1984, 1992 and 1996 Acts), even if this means that a few of the newer stakeholders may be disappointed that their path to deploy competitive products is not cleared of every consideration of the needs of the local communities they intend to serve.

Respectfully submitted,

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